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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/967,218

09/28/2001

John David Tucker

KCC-15,529

7138

35844 7590 04/04/2007
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EXAMINER

TRAN, THAO T

ART UNIT

PAPER NUMBER

1711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

Thao T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007 and 12 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-11 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-11 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/12/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the Amendments filed on 1/16/2007. The IDS filed on 2/12/2007 has also been considered.
2. Claims 1, 5-11, 20-23 are currently pending in this application. Claims 1 and 20 have been amended.
3. In view of the prior Office action, the 112 rejection of the claims has been withdrawn due to the amendments made thereto. The prior art rejection is maintained as set forth below.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 5-11, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutweiler et al. (US Pat. 5,514,752).

Gutweiler teaches a high impact polypropylene molding composition, comprising a mixture of 1-99% by weight of propylene homopolymer or copolymer and 0-60% by weight of a rubber, such as ethylene propylene diene (see abstract; col. 1, ln. 12-16, 55-59), overlapping the instantly claimed ranges. Gutweiler further discloses the use of 90% by weight of polypropylene and 5.96% of EPM (see Examples 7-9), which reads on the instantly claimed range in claim 20 and approximates the claimed range in claim 1.

Gutweiler further teaches the molding can be used for the production of fibers that can be written or printed on (see col. 1, ln. 38; col. 3, ln. 60-63). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that Gutweiler's invention

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would be used in making textile fibers and other articles made therefrom. This is because fibers have been commonly made into textile, and by teaching the production of fibers, Gutweiler's invention would be inclusive of textile fibers or the like.

Note that since the high impact polypropylene compositions are prepared by mixing polypropylene and a rubber, the rubber component serves to strengthen the compositions. Thus the rubber reads on the presently claimed impact modifier and the high impact propylene reads on the presently claimed strengthened polypropylene.

Since the reference teaches the fibers having the same polypropylene composition, the fibers of the Gutweiler would inherently have the same elastomeric properties and softness.

With respect to the textile fiber being spunbond, it has been within the skill in the art that how the fiber is made would have no significant patentable weight when the fiber is being considered. Applicants are reminded that in an article claim, patentability would be imparted by structural elements, and not how the article is made. See MPEP 2113.

Response to Arguments

6. Applicant's arguments filed on 1/16/2007 have been fully considered but they are not persuasive.

In response to Applicants' argument that the inclusion of polyvinyl butyral in Gutweiler would not provide the same softness as presently claimed, the examiner maintains that the claim language does not exclude other chemical components in the polypropylene composition.

Secondly, as pointed out in the prior Office action, Applicants have not provide adequate support to illustrates the effects an additive would have on the properties of the blend of PP and EPDM.

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In addition, while Gutweiler does teach a polypropylene blend including polyvinyl butyral, the reference also discloses, in the prior art section, a polypropylene blend of polypropylene and EPM or EPDM, without the inclusion of polyvinyl butyral. Thus, a blend of polypropylene and EPM or EPDM has been taught in the prior art.

Furthermore, in response to Applicants' argument that the presently claimed invention is directed to an improved softness while the primary objective of Gutweiler is to obtain a composition having high rigidity and hardness, it is noted that the improved softness recited in claim 1 is compared to a non-strengthened PP fiber. And again at least the PP blend in the prior art section of Gutweiler would read on the presently claimed PP blend.

In summary, Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicants are reminded that in an article claim, it is the structural or chemical elements, and not properties, that impart patentability. To patentably distinguish the presently claimed invention from the prior art, Applicants should provide structural or chemical components that give the article its properties different from the prior art.

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Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thao T. Tran
Primary Examiner
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